

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 14811 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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VIKAS VIDYALAYA - Petitioner(s)
Versus
MOHABATSINH JILUBHA ZALA - Respondent(s)

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Appearance :

PS GOGIA for Petitioner(s) : 1,
MRS DT SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 19/09/2005****ORAL JUDGMENT**

1.Rule. Learned Advocate Ms. D.T. Shah appearing for the respondent waives service of notice of Rule on behalf of the respondent. At the joint request of the learned advocates appearing for parties, petition is taken up

for final disposal.

2. In the present petition, the petitioner has challenged the legality and validity of the Order passed by the controlling authority under the Payment of Gratuity Act on 30th January 2004 as subsequently upheld by the appellate authority by its Order dated 28.06.2004. The effect of the Orders passed by the authorities below is that the petitioner is required to pay to the respondent, a sum of Rs. 57766.15 Ps. with interest thereon.

3. Learned advocate Shri Gogia appearing for the petitioner employer submitted that the petitioner has already deposited the principal amount before the controlling authority at Surendranagar. He further submitted that the central question arising in the present petition, whether the petitioner employed more than 20 persons at the relevant time so as to be covered by the provisions of the Payment of Gratuity Act has not been properly considered by the authorities below. He further submitted that the material produced by the petitioner to demonstrate that the petitioner did not employ sufficient number of persons was not

considered. It was further contended that the authorities below clubbed the employees of other institutions which were not run by the petitioner trust. On the other hand, Ms. Shah, appearing for the respondent submitted that the orders passed by the authorities below are just and proper and calls for no interference.

4. She however submitted that even if the issue is to be remanded for reconsideration, the respondent should be paid the gratuity amount deposited by the petitioner.

5. Considering the averments made by both sides, it appears that certain important questions call for reconsideration. The question whether the petitioner is covered by the provisions of the Payment of Gratuity Act and consequently whether the respondent is entitled to receive gratuity from the petitioner needs to be decided on the basis of the materials produced by both the sides.

6. For the above purpose, the impugned Orders passed by the controlling authority as well as the appellate authority noted hereinabove are set aside. The

proceedings are remanded back to the controlling authority for fresh consideration and disposal in accordance with law, after permitting both sides to lead such further evidence as may be found necessary after hearing the parties. Such an exercise may be endeavoured to be completed within a period of 4 months from the date of receipt of a copy of this Order. Both the sides shall cooperate for earlier disposal of the remand proceedings. The amount deposited by the petitioner shall however be paid over to the respondent, subject to the final outcome of the litigation, upon respondent filing an undertaking before this Court within a period of 2 weeks from today to the effect that in case the respondent ultimately loses in the litigation, he will refund the amount received under this Order to the petitioner.

7. With these directions, the petition is disposed of. Rule made absolute to the above extent. No orders as to costs.

(Akil Kureshi, J.)

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